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P.J.G Kapteyn & P. VerLoren van Themaat, Introduction to the Law of the European Communities After the Coming Into Force of the Single European Act

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P.J.G Kapteyn & P. VerLoren van Themaat,
Introduction to the Law of the European
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William J. Davey

Abstract

This Article reviews the book: "Introduction to the Law of the European Communities After the Coming Into Force of the Single European Act" by P.J.G. Kapteyn & P. VerLoren van Themaat. He finds the book to be well-timed considering the European Community's recent completion of its 1992 program. He criticizes the book for being too short to create a comprehensive treatise on European Community law but nevertheless praises it as a clear, understandable and comprehensive work.

BOOK REVIEW

INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES AFTER THE COMING INTO FORCE OF THE SINGLE EUROPEAN ACT. By P.J.G. Kapteyn & P. VerLoren van Themaat. Deventer, the Netherlands: Kluwer. London: Graham & Trotman, 1989. xxvi + 927 pp. ISBN 90-6544-400-9 (Kluwer) & 1-85333-299-2 (Graham & Trotman). US\$115.00.†

*Reviewed by William J. Davey**

In the last several years there has been a renewed awareness in the United States and elsewhere of the European Community (the "EC" or the "Community").¹ This has resulted mainly from the EC's so-called 1992 or internal market program, pursuant to which the EC hopes to complete by December 31, 1992 the common market in goods, labor, services, and capital that should have been completed in 1970 under the Treaty of Rome's original time schedule. The 1992 program was first outlined in concrete terms in an EC Commission white paper published in 1985.² Its goal was incorporated into the Treaty of Rome by the Single European Act, which came into effect in 1986.³ The Single European Act did much more

† US\$47.50 for student soft-cover edition.

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1. Technically, there are three European Communities: the European Coal and Steel Community, established by the Treaty of Paris in 1951, 1973 Gr. Brit. T.S. No. 2 (Cmd. 5189), 261 U.N.T.S. 140; the European Economic Community, established by the Treaty of Rome in 1957, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II), 298 U.N.T.S. 11 (1958) [hereinafter EEC Treaty]; and the European Atomic Energy Community, established by another Treaty of Rome in 1957, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-I & II), 298 U.N.T.S. 169 (1958). Since the 1967 Merger Treaty, the various communities have shared the same institutions, such as the Commission of the European Communities. *Traité instituant un Conseil unique et une Commission unique des communautés européennes* [Merger Treaty], 10 J.O. L 152/1 (1967). Accordingly, it has become the norm to refer to them in the singular as the European Community or simply the EC.

2. Comm'n, *Completing the Internal Market*, COM(85) 310 final (June 14, 1985).

3. Single European Act, art. 13, O.J. L 169/1, at 7, *Common Mkt. Rep. (CCH)* ¶ 21,000, ¶ 21,120 (1987). This article amended the Treaty of Rome by adding a new Article 8a, stating:

than establish the 1992 target. It also modified the institutional provisions of the Treaty of Rome by expanding the range of decisions that could be adopted by a super ("qualified") majority vote of the EC Council of Ministers in place of the prior unanimity requirements. As the qualified majority rules now apply to most measures that need to be adopted to implement the 1992 program, the Single European Act significantly eased the way for the 1992 program.

The 1992 program has been the subject of innumerable discussions in the press and in academic and business conferences. Much of this hype concerning 1992 is overdone. The EC has been working, slowly but steadily, toward completion of its internal market for thirty years. True, progress has been at times glacial, but it has continued to occur. Thus, probably the most important consequence of the 1992 program and the Single European Act is not that they make substantive changes to the concept of the European Community or even to its institutional form,⁴ but in the new commitment they have inspired on the part of the Member States to complete the internal market in a more timely fashion. Even if the internal market program is not fully completed by 1992, it is likely that most of its components will have been implemented. The Community will then probably spend the next few years after 1992 reviewing what it has done and how its relations with the rest of Europe should be handled. It seems unlikely that major substantive changes in the treaties will occur again soon. Consequently, it is a particularly appropriate time for a new work on EC law, one which outlines the institutional structure put in place by the Single European Act and summarizes the substantive law of the European Community.

The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992

....
The internal market shall comprise an area without frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of [the Treaty of Rome].

Id.

4. In addition to changes in the voting requirements to adopt regulations and directives, the Single European Act also increased the role of the European Parliament in the EC legislative process and confirmed the expansion of Community activities in such areas as political cooperation on foreign policy issues, economic and monetary policy coordination, environmental policy, social policy, and research and development promotion.

The new English version of Kapteyn and VerLoren van Themaat's *Introduction to the Law of the European Communities* is therefore particularly timely. The book has been edited by Laurence Gormley, who has updated the text from the fourth (1987) Dutch edition and has added more detailed case and bibliographic references.

The book starts with three chapters giving a general description of the European Community and its basic principles. Chapter I traces the history of the EC; Chapter II gives further background information on several general aspects of Community law, such as its nature and effect; and Chapter III discusses the basic principles of the Community and EC law, focusing on the objectives of the Community and the basic principles contained in Articles 5, 6, and 7 of the European Economic Community Treaty.⁵

The next three chapters examine in detail the various Community institutions and the way in which they interact. Chapter IV gives a general description of the institutions; Chapter V treats the budgetary process and the decision-making procedures as reformed by the Single European Act; and Chapter VI then examines in detail the European Court of Justice. This latter chapter discusses both the jurisdiction of the Court and the position of the Court and Community law vis-à-vis Member State law and courts.

The remainder of the book (approximately 500 pages) examines the substantive law of the EC, which it divides into five chapters of approximately equal length. The four freedoms (movement of goods, workers, services, and capital) are described in detail in Chapter VII. The EC's competition policy is treated in Chapter VIII, while the remaining three chapters discuss the economic, monetary, and social aspects of the EC (Chapter IX); its sectorial policies for areas of the economy such as agriculture, fisheries, transport, steel, and energy (Chapter X); and its external relations, as implemented in its common commercial policy (Chapter XI). The book concludes with a few pages on the future of the EC in light of the recent

5. There are three basic principles: solidarity, economic coordination, and non-discrimination. See EEC Treaty, *supra* note 1, arts. 5-7, 1973 Gr. Brit. T.S. No. 1, at 9, 298 U.N.T.S. at 16.

accession of Spain and Portugal and the ongoing GATT negotiations in the Uruguay Round.

As should be obvious from the foregoing description, the book offers a comprehensive treatment of European Community law, organized on a subject-by-subject basis. Generally speaking, the book gives excellent treatment to the various subjects that it covers. There are, of course, quite a number of English language works on Community law and an even greater number of works in the other Community languages.⁶ What distinguishes *Introduction to the Law of the European Communities* is its noteworthy and detailed treatment of all aspects of Community law. It is much more comprehensive than a number of other one-volume, English works on EC law. This is in large part due to the fact that, with some 850 pages of text, it is much longer than other works. But it is also well written and easy to follow in most respects. Its principal strength is that it contains exhaustive references to the case law of the European Court of Justice, as well as extensive bibliographic references, including many non-English sources.

The principal problem with the book stems from the fact that it attempts in one volume to treat a subject that has grown by leaps and bounds over the last three decades. This problem is, of course, shared by all one-volume treatises on EC law, and this book, because of its length, is probably less affected by enforced brevity than many others. Nonetheless, there are unavoidable consequences of trying to treat all of EC law in one volume. Some subjects will inevitably receive less attention than others.

In my opinion, the part of the book dealing with the institutional aspects of the Community is thorough and comprehensive. The part of the book dealing with the substantive law of the EC is sometimes less satisfying.⁷ This is not to say that it is in any way shallow. Indeed, the problem is more that the treatment in some cases is so sophisticated that a relative newcomer to EC law may find this book is in places a difficult intro-

6. For a comparison of some of the various competing books in this field, see Weiler, Book Review, 11 FORDHAM INT'L L.J. 461 (1988) (reviewing a multivolume English work on EC law (52 Halsbury's Laws of England)).

7. In the case of EC competition law and policy, the authors explicitly note that their treatment is abbreviated and that there are many other works that deal with the subject in more detail.

duction. For example, in the case of the free movement of goods, the authors typically do not explain the principles that they restate in the text. Thus, lacking a description of the underlying facts, the reader who is new to the subject sometimes may have difficulty fully appreciating how the principles are actually applied. Moreover, the authors appropriately do not limit themselves merely to describing the rules established by decisions of the European Court, they also criticize the reasoning of those decisions with which they disagree. While their criticism is typically well founded, the beginning reader may have trouble understanding the discussion because sufficient descriptive background to the criticism has not been provided.

Nevertheless, the book generally is written in a clear and understandable style, and it is so comprehensive for a one-volume treatise that it will doubtless remain a standard work on EC law for some years to come.